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A Limited Liability Partnership

2 Including Professional Corporations

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10 **UNITED STATES BANKRUPTCY COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 In re

13 INTERNATIONAL LONGSHORE AND
14 WAREHOUSE UNION,

15 Debtor.

Case No. 23-30662 HLB

Chapter 11

**ICTSI OREGON, INC.'S STATEMENT
RE STATUS CONFERENCE HEARING**

Hearing

17 Date: November 16, 2023

18 Time: 10:00 a.m. (Pacific Time)

Judge: Hon. Hannah L. Blumenstiel

19 Place: Zoom.Gov

1 **STATEMENT**

2 ICTSI Oregon, Inc. (“ICTSI”), as creditor and party in interest in the above-captioned
3 chapter 11 case (the “Bankruptcy Case”) of International Longshore and Warehouse Union (the
4 “Debtor”), files this statement (the “Statement”) to apprise the Court and other parties in interest of
5 recent developments in connection with the Debtor’s plan confirmation process, and to preview
6 certain concerns that may require the Court’s guidance in the future.

7 For the avoidance of doubt, ICTSI is not seeking any relief from the Court in connection
8 with this Statement. ICTSI has been in regular contact with the subchapter V trustee, Mark Sharf,
9 as to the matters discussed below.

10 **A. The Debtor’s Section 341(a) Meeting of Creditors.**

11 Counsel to ICTSI attended the Debtor’s section 341(a) meeting of creditors held on October
12 24, 2023, and the continued meeting of creditors held on November 6, 2023. At these meetings, the
13 Debtor’s General Counsel, Lindsay Nicholas, provided testimony regarding the Debtor’s connection
14 to and interactions with the ILWU’s Coast Longshore Division (the “CLD”).¹

15 Ms. Nicholas testified that the CLD is currently paying for the ILWU’s legal fees and
16 expenses associated with all litigation listed on the Debtor’s Schedules (*i.e.*, 11 separate pending
17 cases). The ICTSI litigation is the sole exception to this pattern.

18 Ms. Nicholas further testified that, for more than a decade, the CLD also paid the ILWU’s
19 legal and defense fees incurred in connection with the ICTSI litigation. However, on the eve of the
20 Debtor’s bankruptcy filing, the CLD stopped such payments, and that obligation moved to Debtor.

21 In the same vein, Ms. Nicholas testified that the CLD historically listed the contingent
22 liability associated with the ICTSI litigation on its own LM-2 forms that it must file with the U.S.
23 Department of Labor, with this liability again curiously being transferred to the ILWU mere months
24 before the Debtor’s bankruptcy filing.

25 _____
26 ¹ According to the Debtor’s own website, “[t]he core of the union, historically, has been the [CLD], which established
27 the union through its victory in the 1934 West Coast maritime strike. The Coast Longshore Division is made up of
28 approximately 30 locals, divided among longshore workers (including, for example, container handling equipment
operators and mechanics), marine clerks, and foremen.” *How The Union Works*, International Longshore &
Warehouse Union, *available at* <https://www.ilwu.org/about/how-our-union-works/> (last visited November 9,
2023).

1 Ms. Nicholas further testified that she is unaware of any written or oral agreement requiring
2 the CLD to pay these legal fees, but could not comment on whether the payment was either a loan
3 or a gift or something else. The CLD's course of conduct in paying for the ILWU's legal fees raises
4 questions, especially given that many millions of dollars in payments are implicated.

5 Debtor's counsel objected to at least one question Mr. Sharf posed to Ms. Nicholas that went
6 to the Debtor's relationship with the CLD. Similarly, Debtor's counsel instructed Ms. Nicholas not
7 to answer some of ICTSI's similar questions. While ICTSI recognizes that it has the right to take
8 discovery with respect to this information in connection with the plan confirmation process, ICTSI
9 is concerned that the Debtor will be either unwilling or unable (as discussed below) to adequately
10 respond.

11 Beyond Ms. Nicholas' testimony, ICTSI understands that the Debtor's President, William
12 E. Adams, and Vice President, Robert Olvera Jr., each also serves as Chairman and Vice Chairman,
13 respectively, of the CLD's executive committee. ICTSI further understands that Messrs. Adams
14 and Olvera each maintain only one email address (with a @ilwu.org domain) to conduct business
15 on behalf of both the Debtor and the CLD, and one office space (at the ILWU headquarters in San
16 Francisco), is shared between the Debtor and CLD. Both entities also share a single computer
17 server.

18 Discerning the true nature and extent of the relationship between the Debtor and the CLD
19 has predictably been a primary focus of ICTSI thus far in the discovery process. The various
20 overlaps in management, operations, and potentially assets between the Debtor and the CLD, and
21 the absence of any mention of the CLD in the Debtor's schedules of assets and liabilities or statement
22 of financial affairs, other than three transfers made within 90 days prepetition, are anticipated to
23 arise in connection with plan confirmation.

24 **B. The Discovery Process.**

25 As of the time of this filing, ICTSI has served two sets of discovery requests on the Debtor.
26 The Debtor has thus far produced some documents and answers to certain of ICTSI's first set of
27 discovery requests, and responses and objections to others. ICTSI has kept Mr. Sharf apprised as
28 to the status of the discovery process.

1 **C. The Path Ahead.**

2 The Debtor is in a very challenging situation. Its principals (Messrs. Adams and Olvera) are
3 also the principals of the CLD. Having to navigate discovery directed to the Debtor's claims at the
4 CLD has no doubt left the Debtor and its principals in an uncomfortable position. This task is further
5 complicated by the blurred lines between the Debtor and the CLD. ICTSI is coming to appreciate
6 the extent of the entanglement between the Debtor and the CLD.

7 Against this backdrop, it may be very difficult for the Debtor to act impartially as an estate
8 fiduciary in matters relating to the CLD. ICTSI is further concerned that this type of entanglement
9 and overlap could extend to other divisions and entities under the broader ILWU organizational
10 umbrella. As a further complication with respect to CLD, Debtor's counsel jointly represented both
11 the Debtor and the CLD prepetition.²

12 ICTSI previews that this case might require (and benefit from) judicial guidance in the above
13 areas, or an increased role of the trustee, Mr. Sharf.

14 **D. Conclusion.**

15 ICTSI is concerned that the full nature and extent of the Debtor's assets have not been fully
16 disclosed, and that the fiduciaries acting for the Debtor may not be suited to conduct the
17 investigation necessary.

18 Dated: November 9, 2023

19 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

20
21 By

/s/ Ori Katz

22 ORI KATZ
23 GIANNA SEGRETTI
24 KORAY ERBASI

25 *Attorneys for ICTSI Oregon, Inc.*

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27 ² See Application to Employ Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor [Docket No. 29] ("Counsel
28 previously jointly represented the Debtor and Coast Longshore Division ("CLD"). On September 3, 2023, Counsel
terminated its relationship with CLD and signed a new engagement agreement with ILWU only on September 5,
2023.").

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2023, I served by electronic mail a true and accurate copy of the foregoing to all counsel of record.

/s/ Ori Katz
ORI KATZ